

Classification No.:

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3/22/94

POLICY
FOR DISTINGUISHING BETWEEN
ASSISTANCE AND ACQUISITION

1. PURPOSE AND APPLICABILITY. The purpose of this policy is to clarify the criteria for and to achieve consistency in the selection and use of contracts, cooperative agreements and grants by all EPA offices and laboratories. This policy expands on the December 2, 1992 memorandum from the Assistant Administrator for Administration and Resources Management on "When to Use Contracts or Cooperative Agreements and Grants" and the EPA Assistance Administration Manual, Chapter 1.

This policy does not apply to interagency agreements because they are not considered assistance under the Federal Grants and Cooperative Agreement Act.

Please contact the Grants Administration Division's (GAD) Grants Policy and Procedures Branch regarding the contents.

2. BACKGROUND. Various Federal statutes authorize and/or direct the EPA Administrator to carry out specific environmental activities. These statutes may specify whether the activities may be accomplished in-house by using EPA staff or by funding outside parties (extramural funding). The latter includes financial assistance (grants and cooperative agreements) and acquisition (contracts). Certain activities may be undertaken in conjunction with another Federal department or agency, a State, or a local government by Interagency or Intergovernmental Agreements (IAG).

The Federal Grant and Cooperative Agreement Act of 1977 (FGCAA or Act), PL 95-224, as amended (31 U.S.C. 6301 et seq.) established government-wide criteria for determining whether a grant or cooperative agreement or a contract is the appropriate legal instrument to use for an extramural funding activity. Guidance on implementing the Act was issued by the Office of Management and Budget (OMB) in 1978, (see 43 Fed. Reg. 36860 [August 18, 1978]).

The Act was based on a congressional finding that executive agencies were not adequately differentiating between procurement

and assistance relationships. Specifically, Congress was concerned that agencies were misusing assistance agreements to circumvent competition and other procurement rules, and also applying unnecessarily burdensome contract paperwork requirements to non-procurement transactions. To address these problems, and ensure consistent and uniform agency practice, Congress defined in the Act the standards for determining the appropriate use of contracts and assistance agreements.

Under the Act, grants and cooperative agreements are both assistance agreements and are different from contracts. The only distinction between a grant agreement and a cooperative agreement is the degree of federal involvement.

Under section 4 of the Act, 31 U.S.C. 6303, an agency must use a contract if the principal purpose of an instrument is to acquire, by purchase, lease, or barter, property or services for the direct benefit or use of the federal government, or if the agency otherwise determines that use of a procurement contract is appropriate. Under sections 5 and 6 of the FGCAA, 31 U.S.C. 6304 and 6305, an agency may use an assistance agreement only if the principal purpose of an agreement is to transfer anything of value (e.g., money, equipment, services) to an eligible entity to accomplish a public purpose of support or stimulation authorized by statute. Where an agency will not be substantially involved with the recipient during the performance of an assistance agreement, a grant is the appropriate instrument. If substantial federal involvement is contemplated in the assistance relationship, the Agency must select a cooperative agreement.

Under section 10 of the Act, 31 U.S.C. 6307, OMB is authorized to allow exceptions from the Act's requirements in individual cases. OMB's policy is not to allow exceptions absent a clear demonstration that compliance with the Act would result in serious harm.

It is important to note that the FGCAA does not expand the Agency's authority to award assistance agreements. The Agency has no inherent authority to award assistance agreements; such authority must be found in the Agency's statutes and does not derive from the FGCAA. On the other hand, unless legislatively prohibited, every agency has inherent authority to enter into contracts as long as the procurement is related to the agency's mission.

3. POLICY. EPA offices and laboratories awarding extramural funds must determine whether to award a grant or cooperative agreement or a contract based on the principal purpose of the relationship between the parties.

If an office or laboratory's principal purpose in undertaking a project is to obtain a product or service for the direct benefit or use of the Agency, or any part of the Federal government including the legislative and judicial branches, a contract, rather than an assistance agreement, must be used. This is the case regardless of the benefit the project may have for the recipient organization, other non-federal entities, or the public. Offices and laboratories cannot satisfy the principal purpose test to allow the use of an assistance agreement merely by developing a scope of work describing a project as not being for EPA's direct benefit and use. To withstand an audit, there must be substance behind the written scope of work demonstrating that the project is, in fact, intended to support or stimulate a recipient to accomplish a public purpose authorized by statute.

Offices and laboratories may use a contract even where the principal purpose is to establish an assistance relationship, where the use of a contract is appropriate (i.e., when the office or laboratory determines that specific public needs can be satisfied best by using the procurement process). Offices and laboratories should retain documentation that supports their determination that use of a contract is appropriate. (For example, evidence that use of a contract would be substantially more cost-effective.) Such documentation may be part of the Decision Memorandum.

4. DEFINITIONS.

a. **Approval Official.** The individual having the responsibility and delegated authority in an EPA organization for determining whether to fund or reject an application for technical or programmatic reasons.

b. **Award Official.** The individual who signs the assistance agreement ensuring that all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable.

The Award Official for regionally administered programs is either the Regional Administrator, the Assistant Regional Administrator, or the Division Director, depending upon Delegation of Authority and any subsequent Redelegations. The Award Official

for grants and cooperative agreements at Headquarters is the Branch Chief, Grants Operations Branch, Grants Administration Division, Office of Grants and Debarment, Office of Administration and Resources Management.

c. **Decision Memorandum.** An EPA office or laboratory's memorandum to an Award Official containing the decision and justification for funding or rejecting an assistance proposal. This decision is signed by the Approval Official or his/her respective designee.

d. **Grants Management Offices (GMO).** The Headquarters and Regional units responsible for business management aspects associated with the review and negotiation of applications and the award and administration of funded projects from pre-application through audit resolution and final close out. In the Regions the GMOs report organizationally to the ARA; in Headquarters the GMO reports to the Director, GAD.

e. **Statutory Authority.** The section of authorizing legislation (such as Clean Water Act or Pollution Prevention Act, etc.) specifically stating that EPA or the Administrator may or shall make grants or provide financial assistance for the intended purpose. (Appears as Item #19 on EPA's Assistance Agreement.)

5. IMPLEMENTATION PROCEDURES: ROLES AND RESPONSIBILITIES

a. **Approval Official Responsibilities.** Each EPA approval official must determine whether a proposed relationship is one of acquisition or assistance. In making this determination, each EPA office and laboratory will use the criteria set forth in Section VI of this policy. In those limited occasions where the approval official has the responsibility of overseeing an award originating in another office, then the approval official's responsibility is limited to ensuring that the originating office states it has determined an assistance relationship exists based on the criteria set forth in this policy.

Offices and laboratories should review all contemplated projects as soon as possible for the purpose of determining whether the nature of the project activity is acquisition or assistance. If it is unclear whether a project is acquisition or assistance, the office or laboratory should request the responsible GMO/Award Official for assistance.

(2) The Decision Memo must state that the assistance instrument is appropriate based on the criteria outlined in this policy.

(3) In most instances, offices and laboratories must allow at least 60 days lead time (Superfund awards require 90 days) from receipt of application by the GMO to the award date. A much longer lead time may be needed to award a contract.

b. Grants Management Office (GMO) Responsibilities.

(1) The GMO, will review the determination of the office or laboratory and decide whether to concur. The GMO will make this decision in a timely manner and in conjunction with the Office of General Counsel, Grants and Intergovernmental Division (or Regional Counsel), if necessary.

(2) The GMO must return all completed assistance application packages that are acquisition activities to the office or laboratory and say why it cannot award the project as an assistance project.

(3) The GMO will provide training and information dissemination regarding the appropriate use of grants, cooperative agreements and contracts to staff and project officers to help the offices and laboratories determine the appropriate use of assistance funds and to ensure high quality application packages are produced.

c. Award Official Responsibilities.

(1) The Award Official ensures all technical, legal, and administrative evaluations have been made and that the proposed agreement is awardable. If a proposed agreement is awardable, the Award Official is responsible for making the official offer to the designated recipient by signing the award agreement.

6. DISTINGUISHING ACQUISITION AND ASSISTANCE RELATIONSHIPS.

a. Criteria for Distinguishing Between Acquisition and Assistance. The following criteria apply to all EPA awards of extramural funds, except where the authorizing legislation was enacted after the FGCAA and specifically supersedes the FGCAA or other provisions of law. In that case, the award instrument specified in the authorizing legislation must be used. Otherwise, the Agency must use the appropriate award instrument as required by the FGCAA. Approval Officials and Award Officials must determine in each instance the proper instrument to use, given the particular circumstances of the transaction.

The decision to use a contract or an assistance agreement must be based solely on the principal purpose of the relationship. If EPA's principal purpose is acquiring property or services from a recipient for direct Agency (or government) benefit or use, an acquisition relationship exists requiring the use of a contract.

If EPA is funding a recipient to support or stimulate activities that are not principally for the direct benefit or use of the Federal Government, and the award is authorized by federal statute, an assistance relationship exists and a financial assistance agreement (i.e., grant or cooperative agreement) may be used.

Note that substantial involvement during performance is not relevant in determining whether an acquisition or assistance mechanism is required. It is only after determining that an assistance agreement is appropriate that substantial involvement becomes a factor. In other words, the need for substantial involvement does not dictate the use of a cooperative agreement rather than a contract. The substantial involvement test is used to distinguish between a grant or a cooperative agreement.

b. Identifying Principal Purpose of Relationship

(1) **Direct Benefit or Use** - In applying the principal purpose test, offices and laboratories must determine whether the government is the direct beneficiary or user of the activity. If EPA provides the specifications for the project; or is having the project completed based on its own identified needs; or will directly use the report or result of the project (for example, by incorporating or relying on information developed by the project in writing EPA guidance or standards) then, in most cases, the principal purpose is to acquire property or services for the direct benefit or use of EPA and thus, a contract relationship exists. However, there may be cases where EPA expects to derive some incidental use or benefit from funded activities. Such incidental use or benefit does not preclude an award of assistance when the principal purpose is public support or stimulation. For such cases, an assistance vehicle may be still be appropriate.

Not every benefit to or use by the government is direct. Any extramural expenditure that furthers the Agency's goals or mission can be said to be of benefit or use to the government. But not every expenditure produces for the government a benefit or use that is direct, e.g. immediate, uninterrupted, or specific. If an expenditure will produce a benefit or use that is not direct, a contract is not required.

(2) **Support or Stimulation.** "Support or stimulation", although a relatively broad term, does not encompass every agency extramural award. Every award could be construed to serve a public support or stimulation function if this means that its ultimate goal is to serve the public welfare. However, an award that is not authorized by statute or is intended to acquire goods or services for the direct benefit or use of the government can not be an assistance agreement, regardless of how well it serves the public.

To find a public purpose of support or stimulation, the office or laboratory does not have to determine that the recipient needed the federal assistance to perform the activity; nor is it necessary to determine that the recipient, rather than the Agency initiated the proposed project. It is necessary to find that the project is being performed by the recipient, for its own purposes, which EPA is merely supporting with financial or other assistance.

(3) **Non-Profit vs. Profit Organizations.** Type of organization does not drive the decision to use one instrument or the other. A non-profit organization does not automatically qualify for an assistance relationship. Similarly, a profit-making organization does not automatically reflect an acquisition relationship (although a profit-making organization may be an assistance recipient only if the statutory grant authority so provides). The sole determinant of the proper mechanism is principal purpose. Other 'myths' in this area lead one to believe that research should always be funded by an assistance agreement and that universities automatically receive cooperative agreements. In fact, research can be funded by contract and universities can receive grants or contracts, as well as cooperative agreements.

c. **Acquisition and Assistance Examples.** Examples of activities that EPA may (per individual statutory language) fund through assistance agreements include:

- (1) State continuing environmental programs, such as groundwater protection; pesticide enforcement, and public water system supervision;
- (2) Constructing local waste water treatment plants;
- (3) State and local government cleanup of hazardous waste sites;
- (4) Environmental education projects;

(5) Conducting surveys, studies, and research, when the principal purpose is to stimulate or support development or dissemination of knowledge (not primarily for use of EPA;

(6) Training for non-Federal personnel where the recipient selects the trainees, specifies the plan for training, and provides the trainers.

(7) Assistance to associations of State officials, as follows:

As a general rule, an assistance agreement may not be used to support a conference or other services, the principal purpose of which is to provide advice, recommendations, or other information for EPA's direct use in developing or changing guidance, regulations, etc. Thus, for example, an office or laboratory cannot award an assistance agreement to a trade association or consulting firm to arrange and conduct a conference of EPA officials and members of the regulated community if the principal purpose is to enable EPA to obtain the views of the regulated community on a proposed new policy or changes in an existing one. If the office or laboratory needs help in putting on such a conference, it should use a contract to acquire logistical support services.

An exception to this general rule is assistance to associations of State officials who implement EPA programs. An assistance agreement may be used to provide funding to an association of State officials or agencies to hold a conference among its members and EPA officials to discuss issues in the implementation of a Federal effort that the States implement on a day-to-day basis under a formal delegation or as partners with EPA in a coordinated, national effort. Although EPA does derive benefits from such a conference and may subsequently decide to adopt recommendations or use information provided by the State officials at the conference, the principal purpose of the agreement is not to acquire services for the direct benefit or use of the Federal Government. The principal purpose is to support the association in helping its State members participate in developing the policies that they will carry out. State officials and agencies are in the unique role of sharing operational responsibility with EPA for implementation of environmental efforts. EPA may issue the guidance and regulations, but the States are at least equal partners in implementing them. They need, and clearly benefit from, an opportunity to discuss the policies they will be implementing before EPA adopts those policies. The same is also true of Tribal governments that are also partners of EPA in implementing EPA efforts.

At such a conference of EPA and State officials, EPA officials should not finally agree to adopt particular policy positions. EPA officials may tentatively agree on positions, or agree on draft or proposed positions, but any final decisions should be made solely by EPA after review, consideration, and modification by the Agency itself, e.g., by senior managers. The need for subsequent and well documented EPA review and decision should be made clear to conference participants. Such intervening steps between the Agency's receipt of recommendations or information and the Agency's adoption of final positions indicate that EPA does not directly use the State's information.

EPA may not treat an association to which it awards assistance as it would a contractor. Thus, an EPA office or laboratory may not direct an association in arranging the association's conference or in providing other services for EPA's benefit. The conference should be run by the association, not by EPA. The benefits of the assistance should flow primarily to the association and its State members, not to EPA. If the association is merely providing logistical support and other services to EPA in arranging an EPA conference, a contract should be used. This does not mean that EPA personnel may not be substantially involved in the performance of a cooperative agreement, so long as the purpose of the agreement is assistance and they do not give daily direction to the recipient or its contractor.

Examples of activities that MUST be funded through a contract (if not performed 'in-house' by EPA) include:

(a) Evaluation of performance of EPA efforts, projects, or grantee activity when the evaluation is required by or is for the direct use of the Agency;

(b) Surveys, studies, and research which gather specific information desired by EPA for its own use or for dissemination to the public as EPA materials;

(c) Training projects where EPA directs the selection of the trainers or trainees, or the content of the curriculum;

(d) Design or development of items to meet a direct EPA need;

(e) Conferences sponsored or initiated by EPA primarily to meet a specific EPA need or obtain information for use by EPA;

(f) Support the work of EPA Federal Advisory Committee Act (FACA) Committees, as appropriate;

(g) Provide technical, analytical, and application review services/advice for the direct benefit or use of EPA; such as information used to set guidelines;

(h) Evaluate or improve the internal operations of EPA;

(i) Provide support to EPA, with the statutory exception of the Senior Environmental Employee Program;

(j) Produce specific information that will be directly incorporated by EPA into technical, policy or regulatory decisions;

(k) Develop computer models (i.e. software) specifically for EPA use;

(l) Produce data for input into internal Agency computer data bases;

(m) Help (as allowed under EPA Order 1900.2) prepare required EPA reports to Congress;

(n) Help (as allowed under EPA Order 1900.2) prepare EPA guidance documents or manuals;

(o) Operate EPA facilities;

(p) Organize training or other conferences principally for federal employee benefit;

(q) Help perform policy analyses (as allowed under EPA Order 1900.2) for EPA offices;

(r) Provide logistic or other support to EPA employees carrying out technology transfer activities;

7. SELECTING BETWEEN A GRANT OR COOPERATIVE AGREEMENT.

After an office or laboratory determines that an assistance agreement rather than a contract is appropriate, it must then decide whether to use a grant or a cooperative agreement to provide the assistance. The office or laboratory must base this decision on the extent and nature of the Agency's involvement in the activities to be supported under the agreement.

a. **Grant Agreements.** EPA shall use a grant agreement whenever an assistance agreement is appropriate and the office or laboratory does not anticipate substantial involvement with the recipient during performance of the contemplated activities.

b. **Cooperative Agreements.** EPA shall use a cooperative agreement whenever an assistance agreement is appropriate and the office or laboratory anticipates substantial involvement with the recipient during performance of the contemplated activity.

(1) Generally, substantial Federal involvement is anticipated where a project is expected to entail:

- a Intense monitoring by EPA;
- b Joint operational involvement, participation, and/or collaboration between EPA and the recipient;
- c EPA prior review or approval of project phases or the substantive provisions of proposed contracts found within the scope of the agreement;
- d Agency involvement in the selection of key recipient personnel; or
- e EPA collaboration regarding scope of work, organizational structure, staffing, mode of operation and other management process (assuming the principal purpose is not to acquire goods or services for the government, in which case a contract would be required).

(2) Anticipated substantial involvement during performance does not include:

- a Agency approval of recipient plans prior to award;
- b Normal overview activities such as site visits, performance reporting, financial reporting and audit;
- c Unanticipated agency involvement to correct deficiencies in project or financial performance;
- d Agency review of performance after completion.

8. STATUTORY AUTHORITY for ASSISTANCE AGREEMENT.

A grant or cooperative agreement may be awarded only if EPA possesses statutory authority to provide financial assistance for the activity to be supported. If a statute authorizes the award of 'grants' or 'financial assistance' it is deemed to authorize the award of grants and cooperative agreements, whichever is consistent with the FGCAA.

Sometimes EPA provides assistance to one party that subsequently subsequently uses the funds for the benefit of others. EPA may use an assistance agreement with an eligible intermediary to provide assistance to the ultimate beneficiaries, who must also be eligible. The FGCAA does not indicate who is to receive support or stimulation. It does not require that the support or stimulation be only of the immediate party to the agreement. On the other hand, if the intermediary is not itself an eligible recipient, or if the intermediary is effectively serving as a contractor to EPA, then EPA should normally use a procurement contract to obtain the services of the intermediary in assisting eligible recipients.

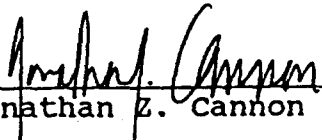
9. IN-KIND ASSISTANCE. In addition to transferring money to an authorized assistance recipient, EPA offices and laboratories may use assistance agreements to transfer anything of value; such as, equipment or services, to a recipient. If it would be more efficient in terms of cost or time for EPA rather than the assistance recipient to purchase equipment or services, EPA may do so and provide the equipment or services to the recipient under the assistance agreement. This approach would be appropriate, for example, where a piece of equipment necessary for a grant assisted project can be purchased at a considerably lower price or be delivered much earlier using an existing EPA contract. Likewise, EPA may provide the services of an EPA contractor to an assistance recipient in lieu of money, where appropriate.

Offices and laboratories should provide the following documentation in their files when providing in-kind assistance:

- a. a savings of cost or time is expected;
- b. all charges are to the grants object class series; and
- c. all other details are in accordance with the "in-kind" grant feature as defined by EPA regulations e.g. 40 CFR parts 30 & 31 and guidance.

10. FAILURE TO COMPLY. In certain circumstances, it may become apparent that an individual office, laboratory, or recipient failed to comply with this Order by awarding an assistance agreement where a contract was required.

Individuals discovering such situations are directed to consult with representatives from the EPA office or laboratory, the Award Official, and the Office of General Counsel to determine all necessary actions. It is GAD policy to allow completion of the assistance agreement where good faith effort was made to determine principal purpose in accordance with the FGCAA. GAD will seek to ensure that future funding decisions by the involved office or laboratory are consistent with the FGCAA. It is not EPA policy to terminate, annul, or require ratification for these awards unless there were or will be serious irregularities, e.g. conflict of interest or intentional misconduct.



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EPA ORDER

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APPENDIX A

ACQUISITION AND ASSISTANCE CASE STUDIES

(These case studies do not depict actual EPA situations. However, they do illustrate commonly raised circumstances regarding acquisition and assistance.)

CASE STUDY #1

FACTS:

1. An EPA office has recently announced a new regulatory program. A trade association has submitted a proposal requesting EPA financial assistance for a national conference to inform its members about the new program and its requirements.
2. The trade association will run the conference, including developing the agenda and selecting the speakers. Association employees and members are among the featured speakers. EPA's role will consist of sending a few officials to the conference to speak, answering questions and monitoring the proceedings.
3. The proposal calls for funds to cover the travel expenses of the non-federal speakers and others who will participate in programs and workshops at the conference.
4. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION A: May the office use an assistance agreement to fund this conference?

ANSWER A: Yes. The principal purpose of the agreement is to support the trade association in training and educating its members, not to acquire services for the Government's direct use or benefit. Although EPA officials will speak at the conference and EPA derives some benefit from explaining its program, the principal purpose of the agreement is to provide information to the regulated parties.

QUESTION B: May the agreement pay for travel expenses of non-federal speakers and other participants in the conference?

ANSWER B: Yes. Participant support costs such as stipends, subsistence allowances, travel allowances, and registration fees for a conference, meeting, or training are allowable under an assistance agreement and are covered by OMB Circular A-122. However, travel costs for Federal personnel cannot be paid for through assistance agreements.

CASE STUDY #1 (continued)

QUESTION C: Could this award be made to a State or local entity covered by OMB Circular A-87 or an educational institution covered by Circular A-21?

ANSWER C: Yes, if there is no statutory prohibition to do so.

QUESTION D: Can this State recipient pay travel and other conference costs for state and other non-federal participants at this conference?

ANSWER D: Yes. A-87 and A-21 do not directly address "participant costs" as does A-122; they only address "selected items" of cost. However, both Circular A-87 and A-21 provide that if an item of cost is not addressed, a determination of allowability should be based on the treatment of similar items. Moreover, EPA believes it would not be appropriate to treat State and local government or educational institutions more restrictively than non-profit organizations in this regard. Therefore, consistent with Circular A-122, as long as not prohibited by the authorizing statute (e.g. Clean Water Act), a state or local recipient may pay travel and other allowable conference costs for participants at an EPA funded conference.

CASE STUDY #2

FACTS:

1. An EPA office has an assistance effort open to non-profit organizations. The EPA office would like a non-profit to provide technical skills to generate data and prepare a report for EPA's use concerning the effort.
2. The work being conducted falls within the statutory authority of the effort.
3. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: Can EPA fund this non-profit organization with an assistance agreement?

ANSWER: No. Even though the non-profit organization is eligible for funding, the principal purpose seems to be to acquire services for the direct benefit or use of EPA.

CASE STUDY #3

FACTS:

1. An EPA office wants to fund a training session for State personnel involved in permit writing and issuance. The office intends to use a cooperative agreement with a non-profit organization knowledgeable in the subject and expert in training.
2. The non-profit organization will run the training session, consulting with EPA on the agenda and the training methods, but not taking direction and supervision from an EPA office.
3. The audience is expected to consist primarily of personnel from State agencies. The course is designed for State personnel and a sufficient number of State (or non-federal) personnel will attend to make holding the training session for those personnel financially feasible and practicable. However, 15 percent of the audience will be EPA Regional personnel.

QUESTION: May the EPA office use a cooperative agreement to fund the training session?

ANSWER: Yes. It is reasonable to determine that the principal purpose is to train non-federal personnel and this training session would be feasible even if no federal participants attended. Conversely, if the training session would not be held but for the attendance of the federal personnel, the principal purpose test would not be met and a contract would be required because the training would not be feasible and practicable.

Here, the principal purpose of the agreement is to train non-federal personnel. That purpose is not changed by the attendance of some federal personnel. Of course, the travel and associated costs of the federal personnel attending the training cannot be paid for by the award. Principal purpose should not be determined based simply on a count of the participants, i.e., the principal purpose is not necessarily to train non-federal personnel anytime at least 51 percent of the audience is non-federal.

CASE STUDY #4**FACTS:**

1. An EPA HQ office wants to award a cooperative agreement to a non-profit organization to hold a conference. The proposal for the conference describes it as an "EPA conference". The agreement provides that EPA will develop the agenda, select the speakers, determine participant costs, and set registration fees.
2. The non-profit organization will help develop the agenda and will provide the programs and conference materials. The non-profit organization will plan and handle conference registration and hotel reservations, arrange the meeting space, and prepare and distribute publicity materials.
3. The non-profit will provide a five percent match and will use information obtained at the conference for educational purposes.
4. The speakers and the audience will be from federal, State, and local governments, plus private nonprofit and profit-making firms.
5. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: May the EPA office use a cooperative agreement to fund this conference?

ANSWER: No. The principal purpose apparently is to acquire the non-profit organization's services to enable the EPA office to hold an EPA conference based on the facts that EPA will develop the agenda, select the speakers, etc. Accordingly, a contract is required. Although the non-profit organization will perform numerous tasks, they are essentially ministerial duties and logistical support. The non-profit will assist EPA in accomplishing Agency objectives. The non-profit's use of information from the conference for educational purposes does not appear to be the principal purpose of the agreement. The provision of a match may suggest an assistance relationship, but in this case it does not outweigh the evidence of a procurement relationship.

CASE STUDY #5

FACTS:

1. EPA wants to award a cooperative agreement for research on the impacts of a treatment standard that the Agency is considering. Before issuing a regulation proposing use of the standard, EPA believes it needs more information to explain the proposal adequately for public comment.
2. The laboratory does not have clearly defined specifications for the research to be performed and will need to be substantially and frequently involved in technical decisions in the research.
3. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: May EPA use a cooperative agreement to fund this research?

ANSWER: No. Although the research may benefit others, EPA's principal purpose in funding the research is to obtain information EPA needs to draft a proposed regulation. Therefore, a contract is required.

CASE STUDY #6

FACTS:

1. An EPA laboratory is planning to issue a request for applications from universities and others for a cooperative research effort and has written a clear and precise description of the research and how it is to be carried out.
2. All sampling activities will be carried out according to established protocols, which describe in detail how the samples are to be taken and what chemicals are to be tested for in the samples. Recipient personnel will have to be trained in the use of the protocol by Laboratory staff.
3. Analysis of the resulting data (and any changes to the sampling protocols) will be carried out by EPA scientists. However, the recipient may propose additional uses for the data.
4. The recipient will be directed to "complete the processing of the ... analytical chemistry samples and transmit the information to EPA in computerized format".

QUESTION: A. Is a cooperative agreement the appropriate award instrument for this activity?

ANSWER: A. No. The activity described above is not assistance. From the information provided, the Laboratory's principal purpose is to acquire sampling and analyses support for the direct benefit and use of EPA. Since the sampling and analysis protocol is already developed, there is no evidence that the award would stimulate or support the recipient in carrying out a public purpose.

QUESTION B. What is the appropriate award instrument for this activity?

ANSWER B. The appropriate award instrument for this activity is a contract. The principal purpose of the activity described above fulfills an Agency need and further provides the laboratory with sampling and analytical services for the direct benefit and use of EPA.

CASE STUDY #7

FACTS:

1. An EPA laboratory has submitted to Headquarters an assistance package to conduct cooperative research regarding wood burning stoves.
2. The recipient will monitor emissions from the stove flues, analyze the data, and submit periodic reports to the EPA Project Officer. For emission levels detected outside of acceptable variances, the recipient will work jointly with EPA to modify the protocol and test the changes.
3. Bench and pilot studies plus the protocol have already been published. This research is an opportunity to prove the protocol in the field and will have a long-term, national impact on air quality, as the technology finds its ways into the manufacturing sector.
4. For purposes of this case study, assume that there is statutory authority and delegated approval authority for this award.

QUESTION: Is the planned activity described above an appropriate use of a cooperative agreement?

ANSWER: Yes. Although EPA will receive some benefit from the field research, the principal purpose of the above mentioned activity fulfills a public purpose of stimulation and support. This work is not merely a sampling and data collection activity. Even if the protocol survives the field tests intact, the principal purpose of this activity stimulates and supports research regarding wood burning stoves and satisfies a public purpose. This activity meets the criteria for selecting assistance as the appropriate award instrument. Further, the statement of work indicates joint operational collaboration and meets the criteria for "substantial involvement" by EPA and demonstrates the appropriate use of a cooperative agreement in this instance.